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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,467	12/19/2001	Kirk W. Skeba	42390P13006	2034

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EXAMINER

LANIER, BENJAMIN E

ART UNIT

PAPER NUMBER

2132

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/028,467		SKEBA, KIRK W.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Benjamin E. Lanier		2132	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 23 February 2006.

2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 4-10 and 16-29 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 4-10 and 16-29 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed 23 February 2006 amends claims 4-10, 16-29, and cancels claims 1-3, 11-15, 30-36 have been cancelled without prejudice.

### ***Response to Arguments***

2. Applicant's arguments filed 23 February 2006 have been fully considered but they are not persuasive. Applicant's argument that Watanabe does not disclose determining whether the radio protocol meets certification requirements of a third-party certification authority prior to the radio protocol being distributing to the vendor is not persuasive because Watanabe discloses that specification changes to radio protocols needs to be authorized by a third party authority such as the FCC ([0002]-[0003] & [0006]) and that the software that implements these changes within the radio system is approved before being distributed ([0008]). The software is distributed from a server ([0056]), which meets the limitation of a vendor. The software is approved by an agency before being stored at the server and distributed to various radios ([0056]).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 5 recites, "the determining of the radio protocol meeting the certification requirements comprises authenticating the radio protocol using a first cryptographic key stored at

the baseband module”, which renders the claim indefinite because claim 1 requires the determination step to be conducted before the radio protocol is received by the vendor. If the vendor provides the radio protocol to the baseband module, it is unclear how the determination step is being conducted with the cryptographic key of the baseband module before the vendor receives the radio protocol.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 4-7, 16-19, 23-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Watanabe, U.S. Publication 2002/0144134. Referring to claims 4, 16, 23, Watanabe discloses a radio system wherein software to update the radio protocol is downloaded to the radio device ([0007]-[0009]), which meets the limitation of identifying a radio protocol, receiving the radio protocol. Specification changes to radio protocols needs to be authorized by a third party authority such as the FCC ([0002]-[0003] & [0006]) and that the software that implements these changes within the radio system is approved before being distributed ([0008]). The software is distributed from a server ([0056]), which meets the limitation of a vendor. The software is approved by an agency before being stored at the server and distributed to various radios ([0056]), which meets the limitation of prior to downloading the radio protocol by a vendor, determining whether the radio protocol meets certification requirements of a third party

certification authority prior to the radio protocol being distributed to the vendor. When received by the distribution server, the software contains approval by the predetermined agency ([0056]), which meets the limitation of providing guarantees regarding the certification requirements to a relevant authority. The radio receives the downloaded software and stores the software when installed ([0010] & [0063]), which meets the limitation of downloading the radio protocol at a non-volatile memory device at a baseband module, if the radio protocol meets the certification requirements.

Referring to claims 5, 6, 17, 18, 24, 25, Watanabe discloses that the software is encrypted with information for detecting falsification ([0020]), which meets the limitation of determining of the radio protocol meeting the certification requirements comprises authenticating the radio protocol using a first cryptographic key stored at the baseband module.

Referring to claims 7, 19, 26, Watanabe discloses that the software is used to reconfigure the radio devices ([0012]). The radio receives the downloaded software and stores the software when installed ([0010] & [0063]), which meets the limitation of the downloading of the radio protocol comprises writing the radio protocol to the non-volatile memory device via a boot loader program.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 8-10, 20-22, 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe, U.S. Publication 2002/0144134, in view of Mayer, U.S. Patent No. 4,442,486.

Referring to claims 8-10, 20-22, 27-29, Watanabe discloses a radio system wherein software to update the radio protocol is downloaded to the radio device ([0007]-[0009]), which meets the limitation of receiving a radio protocol at a baseband module. A test is conducted to verify the software ([0009]), which meets the limitation of determining whether said radio protocol has been certified by a certification authority. After verification the software is installed ([0010]), which meets the limitation of storing said radio protocol in a non-volatile memory device in said baseband module, if said radio protocol has been certified by said certification authority.

Watanabe does not disclose that this test is based on the manufacturer of the radio devices.

Mayer discloses a protected programmable apparatus wherein a device, manufactured by a specific manufacturer, is prevented from operating software that is not approved by the manufacturer (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made for the verification step of Watanabe to include manufacturer information in order to enable the device's manufacturer to control what software is running on their devices as taught in Mayer (Col. 1, lines 23-55).

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin E. Lanier whose telephone number is 571-272-3805. The examiner can normally be reached on M-Th 7:30am-5:00pm, F 7:30am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Benjamin E. Lanier



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